

McCormick, Barstow, Sheppard,
Wayte & Carruth LLP
James P. Wagoner, #58553
jim.wagoner@mccormickbarstow.com
Leif E. Knutson, #234203
leif.knutson@mccormickbarstow.com
Graham Van Leuven, #295599
graham.vanleuven@mccormickbarstow.com
7647 North Fresno Street
Fresno, California 93720
Telephone: (559) 433-1300
Facsimile: (559) 433-2300

Attorneys for Plaintiff AIG Property
Casualty Company

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

AIG PROPERTY CASUALTY
COMPANY,

Plaintiff,

v.

WILLIAM H. COSBY, JR. and
JANICE DICKINSON,

Defendants.

Case No. 2:15-cv-04842-BRO-RAO

**AIG PROPERTY CASUALTY
COMPANY'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF EX PARTE
APPLICATION FOR PROTECTIVE
ORDER**

Judge: Hon. Beverly Reid O'Connell

Trial Date: TBD
Courtroom: 14

1 **I. INTRODUCTION**

2 Pursuant to Rules 5.2(e) of the Federal Rules of Civil Procedure, AIG Property
3 Casualty Company (“AIG Property”) seeks a protective order authorizing it to maintain
4 the redactions in the AIG Property policies attached as exhibits to its complaint in this
5 action.¹

6 By way of background, in this action, AIG Property seeks declaratory relief
7 regarding the rights of AIG Property, William H. Cosby, Jr. (“Cosby”) and Janice
8 Dickinson (“Dickinson”) under homeowners policy no. PCG 0006004261 (the
9 “Massachusetts Policy”), homeowners policy no. PCG 0006004359 (the “California
10 Policy”) and personal excess liability policy no. PCG 0006235889 (the “PEL Policy”)
11 (collectively “The Policies”).

12 This action arises from an underlying action filed by Dickinson against Cosby in
13 Los Angeles Superior Court, case no. BC580909, entitled *Janice Dickinson vs. William*
14 *H. Cosby Jr.*, (“*Dickinson v. Cosby*”). The action arises out of denials by Cosby and/or
15 his alleged representatives of Cosby’s “alleged” sexual misconduct towards Dickinson
16 in 1982. It alleges causes of action for: (1) Defamation/Defamation Per Se; (2) False
17 Light; and (3) Intentional Infliction of Emotional Distress.

18 The pending action in this Court concerns the application of exclusions in each of
19 the policies for claims for “Personal Injury,” defined to include “[d]efamation, libel or
20 slander,” arising out of “. . . alleged . . .” “sexual molestation, misconduct, or
21 harassment,” and also whether any coverage is provided to Cosby individually under
22 the California Policy. *See* Exhibit “A” Pages 14 and 22-23 of 131, Exhibit “B” Pages 3,
23 10, and 21 of 46 and Exhibit “C” Pages 13 and 22-23 of 34. Attached as exhibits to the
24 complaint are copies of The Policies from which certain information has been redacted

25 _____
26 ¹ AIG Property recognizes this Court’s Standing Order (Dkt. No. 10) requiring all
27 discovery motions to be submitted to the assigned Magistrate Judge. However, as
28 discovery has not yet begun, this Application does not pertain to discovery but rather to
the content of exhibits attached to the Complaint.

1 consisting of property locations, vehicle identification information and premiums.
 2 Complaint ¶'s 9, 15, 22. No information relating to the extent of personal liability
 3 coverage for Cosby has been redacted.

4 The information redacted from The Policies is irrelevant to the issues involved in
 5 this action, and there is no basis to justify its disclosure to Dickinson or her attorneys.

6 No other parties have yet appeared in this matter. However, pursuant to Local
 7 Rule 5.2-1, AIG Property may be required to provide unredacted versions of the
 8 policies at the request of an opposing party or counsel. Because The Policies contain
 9 sensitive information identifying property and vehicles owned by Cosby, and premiums
 10 paid to AIG Property, the information was redacted to protect Cosby's privacy.

11 This Court should issue a protective order for the sake of preserving Cosby's
 12 privacy in the information redacted from The Policies.

13 **II. EX PARTE RELIEF IS NECESSARY HERE**

14 *Ex parte* relief is procedurally proper under the circumstances. AIG Property
 15 filed its complaint on June 26, 2015, and requested a waiver of service from counsel for
 16 Defendants Cosby and Dickinson, respectively. *See* Wagoner Decl. ¶ 6. While counsel
 17 for both Defendants responded agreeing to waive service, and counsel for Dickinson
 18 has executed a waiver of service, no party, other than AIG Property, has yet made an
 19 appearance. *See* Wagoner Decl. ¶¶ 21-22. Cosby, through his counsel, has objected to
 20 the disclosure of the redacted information. *See* Wagoner Decl. ¶¶ 10, 16, 19. However,
 21 Dickinson's counsel has requested unredacted copies of The Policies. *See* Wagoner
 22 Decl. ¶ 7.

23 Local Rule 5.2-1 requires that "[i]f a redacted version of the document is filed,
 24 counsel shall maintain possession of the unredacted document pending further order of
 25 the Court or resolution of the action (including the appeal, if any) and shall, at the
 26 request of opposing counsel or parties, provide a copy of the complete document."
 27 Pursuant to this rule, absent a Court Order pursuant to this Application or otherwise,
 28 AIG Property may be required to provide unredacted versions of The Policies to

1 Dickinson or her counsel, despite Cosby's vigorous opposition to such disclosure for
 2 obvious reasons. Given this circumstance, AIG Property is compelled to resort to this
 3 *ex parte* application to obtain the necessary relief.

4 **III. THE PERSONAL INFORMATION IN AIG PROPERTY'S POLICIES**
 5 **SHOULD NOT BE DISCLOSED.**

6 "For good cause, the court may by order in a case" "require redaction of []
 7 information." F.R.C.P. 5.2(e).

8 The private information redacted from the copies of the policies attached as
 9 exhibits to the Complaint consists of information regarding the location of insured
 10 properties, the number and identity of vehicles owned by Cosby and insured by AIG
 11 Property under the policies, as well as amounts paid by Cosby for premiums for The
 12 Policies. As this action only involves coverage for the alleged personal liability of
 13 Cosby to Dickinson, the information redacted from The Policies is irrelevant to the
 14 issues involved in this action and there is no basis to justify its disclosure to Dickinson
 15 or her attorneys.

16 Information sought for purposes unrelated to a lawsuit should not be discovered
 17 by an opposing party. *See Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 35 (1984).
 18 While there is a strong presumption of access, *Foltz v. State Farm Mut. Auto. Ins. Co.*
 19 331 F.3d 1122, 1135 (9th Cir. 2003), "[t]here is an opportunity, therefore, for litigants
 20 to obtain—incidentally or purposefully—information that not only is irrelevant but if
 21 publicly released could be damaging to reputation and privacy. The government clearly
 22 has a substantial interest in preventing this sort of abuse of its processes." *Seattle Times*
 23 *Co.*, 467 U.S. at 35.

24 The Ninth Circuit has previously found that "names [and] addresses" can easily
 25 be redacted from records "while leaving other meaningful information." *Foltz v. State*
 26 *Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1137 (9th Cir. 2003). In *Foltz*, the
 27 information at issue related to third party privacy interests, but the rationale was the
 28 same as this action. *Id.* There, a limited amount of personal information was contained

1 in records otherwise containing material relevant to the issues at hand. *Id.*

2 Here, there is a limited amount of personal information contained in the policies,
3 including property locations, vehicle identifications and premiums paid for the policies.
4 In this action, AIG Property seeks declaratory relief as to the rights of itself, Cosby and
5 Dickinson under the personal liability provisions of the Policies. Those issues have
6 nothing to do with the property or vehicles insured under the policies, much less what
7 premiums were paid for the policies. As such, the redacted information is irrelevant to
8 this action, and if released, could be damaging to the privacy of Cosby.

9 **IV. THE PROPER VENUE FOR DISCOVERY OF REDACTED**
10 **INFORMATION FROM THE AIG PROPERTY POLICIES BY MS.**
11 **DICKINSON IS THE STATE COURT ACTION.**

12 Under the law of California which is applicable to the *Dickinson v. Cosby* action,
13 “[a] party may obtain discovery of the existence and contents of any agreement under
14 which any insurance carrier may be liable to satisfy in whole or in part a judgment that
15 may be entered in the action or to indemnify or reimburse for payments made to satisfy
16 the judgment. This discovery may include the identity of the carrier and the nature and
17 limits of the coverage. A party may also obtain discovery as to whether that insurance
18 carrier is disputing the agreement's coverage of the claim involved in the action, but not
19 as to the nature and substance of that dispute. Information concerning the insurance
20 agreement is not by reason of disclosure admissible in evidence at trial.” Cal. Code Civ.
21 Pro. §2017.210.

22 To the extent material, any information regarding “contents” of an agreement
23 between Cosby and AIG Property or any other insurance carrier may properly be
24 sought under the discovery rules of California in the underlying state court action.
25 Dickinson’s counsel, Mr. Candappa, has already recognized the availability of
26 procedures in the state court action if Ms. Dickinson continues to seek the redacted
27 information. *See Wagoner Decl.* ¶ 12.

28 Accordingly, at a minimum, the proper forum for the discovery of the redacted
information, which is irrelevant to the declaratory relief pending before this Court, is

1 the *Dickinson v. Cosby* state court action.

2 **V. CONCLUSION**

3 For the reasons set forth above, AIG Property respectfully requests that a
4 protective order be issued.

5 Dated: July 7, 2015

McCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH LLP

6
7
8 Bv: /s/ James P. Wagoner
9 James P. Wagoner
10 Lejf E. Knutson
11 Graham Van Leuven
12 Attorneys for Plaintiff AIG Property
Casualty Company

13 3486746.1

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF FRESNO

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Fresno, State of California. My business address is 7647 North Fresno Street, Fresno, CA 93720.

On July 7, 2015, I served true copies of the following document(s) described as **AIG PROPERTY CASUALTY COMPANY'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF EX PARTE APPLICATION FOR PROTECTIVE ORDER** on the interested parties in this action as follows:

Robert P. LoBue
Patterson Belknap Webb & Tyler LLP
1133 Avenue of the Americas
New York, NY 10036-6710
Telephone: (212) 336-2596
Email: rlobue@pbwt.com

Represents Defendant,
WILLIAM H. COSBY

Lisa Bloom
Jivaka Candappa
Nadia Taghizadeh
THE BLOOM FIRM
20700 Ventura Blvd., Suite 301
Woodland Hills, CA 91364
Telephone: (818) 914-7314
Facsimile: (866) 852-5666
Email: lisa@thebloomfirm.com
jivaka@thebloomfirm.com
nadia@thebloomfirm.com

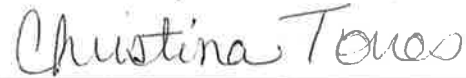
Attorneys for Defendant,
JANICE DICKINSON

BY ELECTRONIC SERVICE (E-MAIL): Based on a court order or an agreement of the parties to accept electronic service, my electronic service address is christina.torres@mccormickbarstow.com, and I caused the document(s) to be sent to the persons at the electronic service address(es) listed in the Service List. The document(s) were transmitted at ____ a.m./p.m. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

BY OVERNIGHT DELIVERY: I enclosed said document(s) in an envelope or package provided by the overnight service carrier and addressed to the persons at the addresses listed in the Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight service carrier or delivered such document(s) to a courier or driver authorized by the overnight service carrier to receive documents.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

1 Executed on July 7, 2015, at Fresno, California.

2 

3
4 Christina Torres